



U. S. Fish and Wildlife Service

## Florida Manatee Emergency Designation of Federal Manatee Protection Areas Frequently Asked Questions

(updated September 20, 2001)

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### **Q1: Why are you designating emergency manatee protection areas at this time?**

A1: The Service believes these seven (7) wintering sites, described in our August 10, 2001, proposed rule to establish 16 additional manatee protection areas in Florida, meet the criteria for emergency designation. In deciding to implement this emergency rule, the Service has carefully assessed the best available information to evaluate manatee and human interactions at these seven sites. The Service's review found that there is imminent danger of a take of one or more manatees in these warm-water wintering sites because manatees congregate in these locations seasonally, that there is a history of harassment at these and/or similar sites, future take is likely, current regulatory measures are inadequate, and anticipated State or local actions will not have been finalized or implemented to be in effective for the winter season. Emergency designation is appropriate at this time because it will reduce the potential for take to occur before a final designation can be prepared, published and posted for these sites.

### **Q2: What has occurred to change your earlier published opinion there were no areas qualifying for emergency designation?**

A2: The Service's latest review was undertaken after a U.S. District Court judge determined that the Service's actions did not satisfy the terms of a lawsuit settlement agreement approved by that court in January 2001. The court determined that the Service must designate both refuges and sanctuaries in a broader area of peninsular Florida. The Service is taking this action to expedite implementation of manatee protection measures where we believe emergency designations are warranted.

### **Q3: What is your legal authority to establish/designate manatee refuges or sanctuaries?**

A3: The authority to establish protection areas for the Florida manatee is provided by the *Endangered Species Act of 1973*, as amended and codified in Title 50 of the *Code of Federal Regulations*, part 17, subpart J, and by the *Marine Mammal Protection Act of 1972*, as amended and codified in Title 50 of the *Code of Federal Regulations*, part 18. We may, by regulation, establish manatee protection areas (sanctuaries or refuges) whenever there is substantial evidence showing such establishment is necessary to prevent the taking of one or more manatees.

### **Q4: What is a manatee sanctuary?**

A4: Manatee sanctuaries are areas in which **all** waterborne activities are prohibited to prevent the taking (including killing, injuring or harassing) of one or more manatees. Designation of manatee sanctuaries will not eliminate waterway property owner access rights. Public and private property owners and their designees would be permitted watercraft access and allowed to maintain property and waterways when their property is located in a manatee sanctuary or refuge. Any authorized boating activity in the sanctuaries would be conducted by operating watercraft at idle speed and maintenance activities would

be allowed, subject to any Federal, State or local permitting requirements.

**Q5: What is a manatee refuge?**

A5: Manatee refuges are areas where **certain** waterborne activities may be restricted or prohibited to prevent injuring or killing one or more manatees. Waterborne activities that may be restricted include, but are not limited to, swimming, diving (including skin and SCUBA diving), snorkeling, water skiing, surfing, fishing, the use of water vehicles, and dredging and filling operations. For an area designated as a manatee refuge, the regulation will state which, if any, waterborne activities are prohibited, and state the applicable restrictions. Designation of manatee refuges will not eliminate waterway property owner access rights. Public and private property owners and their designees would be permitted watercraft access and allowed to maintain property and waterways when their property is located in a manatee sanctuary or refuge. Any authorized boating activity in the refuges would be conducted by operating watercraft at slow speed and maintenance activities would be allowed, subject to any Federal, State or local permitting requirements.

**Q6: What is "take"?**

A6: "Take", as defined by the Endangered Species Act, means "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct." "Harm" is further defined by us to include significant habitat modification or degradation that actually results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding or sheltering. We define "harass" as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering.

"Take," as defined by the Marine Mammal Protection Act, "means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal." Our implementing regulations at 50 CFR 18.3 further define take as follows: To harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill any marine mammal, including, without limitation, any of the following: The collection of dead animals or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; or the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in the disturbing or molesting of a marine mammal.

"Harassment" is defined under the MMPA as any act of pursuit, torment, or annoyance which--(i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to migration, breathing, nursing, breeding, feeding, or sheltering.

**Q7: Where will the emergency manatee protection areas be located?**

A7: The manatee protection areas we are designating under the emergency designation at this time include:

*Seasonal (October 1 through March 31, inclusive) manatee sanctuaries:*

**Blue Waters Manatee Sanctuary:** This sanctuary, commonly referred to as the Blue Waters, is

located at the headwaters of the Homosassa River immediately downstream of the main spring head of Homosassa Springs. The sanctuary will provide manatees with a warm water site, free of harassment from swimmers and other waterborne traffic.

**Bartow Electric Generating Plant Manatee Sanctuary:** This site includes the Bartow Electric Generating Plant's heated discharge near St. Petersburg on Tampa Bay in Pinellas County. This designation will ensure that wintering manatees using this site are undisturbed by anglers, boaters, and other activities.

**Tampa Electric Company's Big Bend Manatee Sanctuary:** This sanctuary extends an existing, State-designated manatee sanctuary at the Tampa Electric Company's Big Bend Electric Generating Station, located in Tampa Bay in Florida's Hillsborough County. By expanding the existing sanctuary, manatees will be fully protected at this site from harassment by anglers, boaters, and other activities.

**Port Sutton Manatee Sanctuary:** This sanctuary includes the warm water discharge located at the Tampa Electric Company's Gannon Electric Generating Station in Tampa Bay in Hillsborough County. This sanctuary will safeguard wintering manatees historically known to use this site from harassment and other takings known to occur at warm water refugia.

***Seasonal (October 1 through March 31, inclusive) manatee refuges:***

**South Gandy Navigation Channel Manatee Refuge:** This refuge includes the channel north of the Bartow Electric Generating Plant near St. Petersburg in Florida's Pinellas County. Boat operators will be required to operate at slow speed within the refuge. This action should reduce the likelihood of boat collisions with manatees traveling to and from the warm water discharge.

**Tampa Electric Company's Big Bend Manatee Refuge:** Waters adjacent to and south of the manatee sanctuary at the Tampa Electric Company's Big Bend Electric Generating Station in Hillsborough County will be designated as the "Tampa Electric Company's Big Bend Manatee Refuge". This refuge will provide boaters with ingress and egress to the lagoon and canals in North Apollo Beach. Boat operators will be required to operate at idle speed to reduce the likelihood of boat collisions with manatees traveling to and from the warm water discharge.

**Port Sutton:** The Port Sutton area south of the Tampa Electric Company's Gannon Electric Generating Station in Hillsborough County has been designated as a manatee refuge. Watercraft operating within this area will be required to operate at idle speed to reduce the likelihood of boat collisions with manatees traveling to and from the warm water discharge.

**Q8: Where would the remaining proposed refuges be located that are being considered for final action by November 1, 2002?**

A8: The remaining manatee refuges that we proposed in August 2001 and for which we will make a final decision by November 1, 2002 are:

**Pansy Bayou:** Water-ski area in Sarasota County. We would regulate vessel traffic to slow speed all year. The remaining waters around the proposed refuge are currently designated by the State as slow speed-channel included zones.

**Little Sarasota Bay:** In Sarasota County. Boats traveling outside the marked channel of the Intra coastal Waterway would be required to maintain slow speed all year.

**Lemon Bay:** In Charlotte County. All waters outside of the marked channel would be regulated to provide for slow speed vessel operation all year.

**Peace River:** The river and all associated waters northeast of the Tamiami Trail (U.S. Highway 41) in Charlotte and Desoto Counties. Waters within the marked navigation channel would be regulated to allow watercraft to travel at a maximum speed of 25 miles per hour (mph). All waters outside of the marked channel would be regulated to provide for slow speed vessel operation all year.

**Shell Island:** Navigation channel located just north of Shell Island at the mouth of the Caloosahatchee River, Lee County. We would regulate vessel speed as slow speed-channel included all year.

**Haulover Canal:** All waters lying within a radius of 0.5 mile of each end of the Haulover Canal, Brevard County, and including the canal itself would be designated as a slow speed-channel included zone all year. While vessels are currently required by the State to proceed at slow speed within the confines of the canal, there is no speed regulation to the east and west of the canal.

**Cocoa Beach:** Area adjacent to Municipal Park at Cocoa Beach, Brevard County. We would regulate vessel operation to slow speed all year. The site is currently a water-ski area regulated by the State as a 35-mph zone all year, whereas the surrounding waters are regulated as slow speed zones all year.

**Q9: How is "idle" speed defined in these regulated areas?**

A9: "Idle" speed is defined as the minimum speed necessary to maintain watercraft steerage.

**Q10: How is "slow" speed defined in these regulated areas?**

A10: "Slow" speed is defined as the speed at which the watercraft proceeds fully off plane and is completely settled in the water. Since watercraft of different sizes and configurations may travel at different speeds, a specific speed is not assigned. However, a watercraft is NOT proceeding at slow speed if it is - 1) on plane, (2) in the process of coming up on or coming off of plane, or (3) is creating an excessive wake. A watercraft IS proceeding at slow speed if it is fully off plane and completely settled in the water, not plowing or creating an excessive wake. Protections areas may also carry a channel qualifier, exempt or included. In such instances this refers to the existing marked navigational channel.

**Q11: Was the public given an opportunity to participate in this process?**

A11: Yes. A proposed rule was published in the Federal Register on August 3, 2001. We then held a series of four (4) public hearings in September 2001 to solicit comments, suggestions and additional recommendations. During the 60 day public comment period, we received 3,500 public comments on the proposed rule.

**Q12: Will these manatee protection areas affect property rights?**

A12: No. For each proposed protection area, designation of manatee refuges or sanctuaries will not eliminate waterway property owner access rights. Public and private property owners and their designees would be permitted watercraft access and allowed to maintain property and waterways when their property is located in a manatee sanctuary or refuge. Any authorized boating activity would be conducted by operating watercraft at idle speed in sanctuaries and slow speed in refuges.

**Q13: Will designation of a site as a manatee refuge or sanctuary restrict my access to Florida's waterways?**

A13: The designation of manatee protection areas is not intended to create blanket access restrictions to Florida's waterways. However, some level of impact would be experienced in areas designated as manatee protection areas. The types of prohibited or restricted waterborne activities and schedule for such will vary from site to site and may be seasonal in nature. In all cases, designation of manatee sanctuaries and refuges will not eliminate waterway property owner access rights.

**Q14: Do you consider economic and quality of life impacts on citizens when making final site selection?**

A14: Yes. We consider waterway access, impact on commercial and recreational waterway uses, as well as community economic impacts in reaching final decisions. Under the emergency designation process, these factors can be considered as long as the basic purpose of the emergency site designations - reducing or eliminating the take of manatees - is achieved.

**Q15: Are you singling out watercraft as the only cause of manatee mortality?**

A15: No. We acknowledge that watercraft-related mortality is not the only cause of manatee deaths. It is, however, the number one cause of human-related deaths. Designation of manatee protection areas offers us an opportunity to implement sound, effective risk-reduction management actions. Adult survival rates are one of the key criteria we consider in evaluating the success of our recovery efforts, and implementation of these proposed protection areas is expected to have a significant impact on overall adult manatee survival rates.

**Q16: I thought the Florida Fish and Wildlife Conservation Commission was designating speed zones, refuges and sanctuaries; are you coordinating your efforts with the state agencies?**

A16: We are coordinating our efforts closely with the Commission.

**Q17: Does the Fish and Wildlife Service have enough people to post regulation signs and boundary signs?**

A17: Yes. We are committed to posting and enforcing any manatee protection area we designate. In addition, the state has committed substantial resources to increase law enforcement relating to manatees.

**Q18: How are manatee protection areas enforced?**

A18: Manatee protection area restrictions are enforced by our law enforcement officers through routine

patrol and task force operations. Using unmarked watercraft, our officers monitor and document boat operators violating posted manatee protection zone restrictions. Information and evidence gathered by the officers is turned over to the U.S. Attorney's Office, which subsequently issues a federal violation notice to the offender. First offender notices offer the option of paying a fine or appearing before a U. S. Magistrate Judge. Repeat offenders may not receive this option and may be required to appear in federal court. Our officers coordinate with State conservation officers, local sheriff marine patrols, and the U.S. Coast Guard to conduct task force actions and provide manatee protection areas enforcement training.

**Q19: What are the next steps in the process?**

A19: The Service is proceeding to implement its sign plan, obtaining the necessary permits, procuring of signs and preparing to post the manatee protection areas on or about October 1.

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